

March 23, 2022

Via email

Dr. Carlton Waterhouse
Deputy Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW,
Washington, DC 20460
Waterhouse.carlton@epa.gov

Dear Dr. Waterhouse:

The undersigned groups are writing to follow up on the February 17, 2022 meeting with the U.S. Environmental Protection Agency ("EPA") to express our grave concerns with the AES coal plant in Guayama, Puerto Rico ("AES-PR"). We appreciate your agency's initial step in sending AES-PR a compliance obligation letter in January, which highlighted the deficiencies in its "remediation plan" of Monitored Natural Attenuation ("MNA") and installation of a liner. As you are aware, coal ash contamination caused by AES-PR has polluted the groundwater and adversely impacted nearby communities - making timely and proper cleanup, vital. Some of the main takeaways from our recent meeting are listed below, as well as ongoing concerns with AES-PR's failure to comply with the federal CCR Rule, and new information from AES-PR's 2021 Groundwater Monitoring and Corrective Action report that was recently publicly released.

- **AES-PR's failure to respond to EPA's compliance obligation letter.** More than two months have now passed. The EPA failed to include a deadline by which AES-PR must respond. It has been nearly three years since AES-PR initiated the corrective measures assessment process, and based on AES-PR's past conduct, we are highly concerned that the company will continue to move forward with a corrective action process that does not meet the requirements of the CCR Rule unless faced with a deadline to respond to EPA's concerns. As discussed during the meeting, AES-PR is currently in the process of installing the liner and has not put the construction on hold.
- **AES-PR's financial claims** and the company's proposal to transfer ownership of the coal plant to the Puerto Rican government with the request that the government grant AES-PR a new contract to continue operating the plant. We are concerned that AES-PR is more focused on its financial troubles than the company's responsibilities to clean up the extensive contamination it has caused in Puerto Rico.
- **EPA's authority to enforce the CCR Rule.** We urge EPA to commence an enforcement action against AES-PR for its failures to comply with the federal rule. In addition to not providing site-specific evidence to support the selection of MNA, we hold notable concerns with the proximity of AES-PR's proposed liner to the groundwater and the liner's compatibility with the coal ash. Thus, it is critical that EPA accounts for groundwater elevations that could make portions of the liner material wet, since the liner is proposed to be within three feet of the groundwater. Placement of the waste pile in a manner that allows the CCR to be in contact with groundwater would not constitute adequate source control and would be a violation of 40 C.F.R. § 257.97(a)(3).

- **Additional violations of the CCR Rule are documented in AES-PR's recent 2021 CCR Annual Groundwater Monitoring and Corrective Action Report.** Groundwater samples from April and October 2021 reveal exceedances of the federal drinking water standard for arsenic, including levels *over twice the standard* in October. Although these exceedances are documented in the tables attached to the report, AES-PR does not mention them in the report. Failure to report these exceedances and to file a notification on AES-PR's publicly available website is a violation of 40 C.F.R. § 257.95(g). AES-PR's groundwater remedy should also be amended to address the elevated arsenic levels. In addition, since 2020, AES-PR has violated the CCR Rule at 40 C.F.R. § 257.90(e) by failing to report contaminant levels in the nine "temporary" groundwater monitoring wells that the company installed in 2019 to determine the nature and extent of the contaminated plume originating at its coal ash waste pile. They are the farthest wells from the source of the contamination, located on the plant boundary. They are also sited on the northern boundary of the wetland, separating the plant from the bay, so the levels of contaminants are critical to determine the extent of contamination flowing off-site, into the wetlands and bay. These levels are also crucial, as the contamination may reach drinking water wells of residents located less than a half mile south of the plant.
- **AES-PR's coal ash waste was disposed of at dozens of sites overlying the South Coast Aquifer** in the municipalities of Guayama, Salinas, Arroyo, and Santa Isabel in southeastern Puerto Rico. The heavy metals in the AES-PR waste are leaching into the soil and groundwater. At some of these sites, the coal ash waste is uncovered, exposed to the elements, which generates fugitive dust and erodes into nearby waterbodies. The exposure to the coal combustion waste presents imminent and substantial endangerment to the health of the residents in the communities where it has been disposed of and threatens ecosystems.
- **Continuing violations due to fugitive dust emissions are occurring at the plant.** A video taken by a local resident in March shows AES' failure to control fugitive dust while loading ash onto a barge in Jobos Bay in violation of 40 C.F.R. § 257.80(a). *See* <https://www.facebook.com/groups/678202402352487/permalink/1981636088675772/>

AES-PR has a well-documented history of failing to protect the people of Puerto Rico from its toxic waste and violating the CCR Rule. Based on these most recent violations and the company's lack of response to EPA's compliance obligation letter, our communities will continue to suffer and be left in limbo unless EPA takes action to enforce the federal rule.

We insist that the incorrect way in which the EPA has classified coal combustion residues as a non-hazardous solid waste, despite the fact that it is dangerous and toxic, exposes the environment and the health of people near the plant coal to a terrible impact on their lives. As long as this polluting AES facility continues to operate in violation of federal law, people's quality of life will continue to deteriorate.

We appreciate EPA taking the time to meet with us last month and would like to request an additional meeting in the near future to discuss both our ongoing and latest concerns, and to receive updates from your agency.

Sincerely,

Víctor Alvarado Guzmán
Comité Diálogo Ambiental

Adriana González Delgado
Sierra Club

Nilda Dávila Collazo
Somos Sur

Noriann Meléndez Vélez
Cuatro Costas

Yanina Moreno Febre
Campamento contra las cenizas en Peñuelas

Hernaliz Vázquez Torres
Acción Climática Ahora

Javier Biaggi Caballero
Basura Cero Arecibo

Vanessa Uriarte Centeno
Amigxs del Mar

José M. Díaz Pérez
Sociedad Espeleológica Unida del Sur, Inc.

Juan Camacho Moreno
Toabajeños en Defensa del Ambiente

Myrna Conty
Coalición de Organizaciones Anti Incineración

CC:

Lisa Garcia, Region 2 Administrator
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Ariel Iglesias
Director, Land, Chemicals and Redevelopment Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 25th Floor
New York, New York 10007

Carmen Guerrero, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency
City View Plaza II – Suite 7000
#48 Rd. 165 km 1.2
Guaynabo, PR 00968-8069